Supreme Court, U.S.
FILED
JUN 6 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-2021

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

STANLEY R. GREER, Airman, U.S. Navy,
Petition,

v.

UNITED STATES OF AMERICA
Respondent,

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF MILITARY APPEALS

DAVID C. LARSON
Captain
JAGC, U.S. Navy
Counsel of Record

RICHARD F. MCMANUS
Lieutenant
JAGC, U.S. Navy
Appellate Defense Counsel

Navy-Marine Corps
Appellate Review Activity
Washington Navy Yard
Washington, D.C. 20374
(202) 433-2297

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

33pp

QUESTION PRESENTED

Whether petitioner's repeated and express desire for speedy disposition of his pending charges satisfied the notice and request requirements of Article III of the Interstate Agreement on Detainers Act?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	iii
OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL PROVISION INVOLVED	2
STATUTORY PROVISION INVOLVED	2
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE PETITION	7
CONCLUSION	13
APPENDICES:	
A. Opinion of the U.S. Court of Military Appeals	1a
B. Opinion of the U.S. Navy-Marine Corps Court of Military Review	10a
C. Order of the U.S. Court of Military Appeals Denying Petition for Reconsideration	14a

TABLE OF AUTHORITIES

CASES: Page

Burns v. State, 578 S.W.2d 650 (Tenn. Cr. App. 1978) 12

Carchman v. Nash, _____ U.S. _____, 105 S.Ct. 3401 (1985) 13

Cuyler v. Adams, 449 U.S. 433 (1981) 8, 11

Gray v. Benson, 443 F.Supp. 1284 (D. Kan. 1978), *aff'd*, 608 F.2d 825 (10th Cir. 1979) 12

McCallum v. State, 407 So.2d 865 (Ala. Cr. App. 1981) 12

Romans v. Dist. Ct., Eighth Judicial District, 633 P.2d 477 (Colo. 1981) 12

Schofs v. Warden, 509 F.Supp. 78 (E.D. Ky. 1981) 12

Tinghitella v. State of California, 718 F.2d 308 (9th Cir. 1983) 12

United States v. Hutchins, 489 F.Supp. 710 (N.D. Ind. 1980) 12

United States v. Mauro, 436 U.S. 340 (1978) . 8, 11, 13

Williams v. Maryland, 445 F.Supp 1216 (D. Md. 1978) 12

CONSTITUTION AND STATUTES:

U.S. CONST. amend. VI 2

10 U.S.C. § 886 (1982) 7

10 U.S.C. § 925 (1982) 7

10 U.S.C. § 934 (1982) 7

18 U.S.C. App., Pub. L. No. 91-538 § 2, 84 Stat. 1397 (1970) ..... *passim*

28 U.S.C. § 1259(3) 2

Maryland Annotated Code, art. 27, §§ 616A-616S 8

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

No. 85-

STANLEY R. GREER, Airman, U.S. Navy,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF MILITARY APPEALS

Airman Stanley R. Greer, U.S. Navy, respectfully petitions that a writ of certiorari issue to review the judgment and opinion of the United States Court of Military Appeals in this case.

OPINIONS BELOW

The decision of the United States Court of Military Appeals (App. 1a) is reported at 21 M.J. 338 (C.M.A. 1985). The opinion of the United States Navy-Marine Corps Court of Military Review (App. 10a) is an unreported decision, *United States v. Greer*, No. 84 0895 (N.M.C.M.R. 26 July 1984). The order of the Court of Military Appeals, dated April 8, 1986, denying

petitioner's request for reconsideration (App.14a) is reported at 22 M.J. ___. (C.M.A. 1986)

JURISDICTION

The judgment of the United States Court of Military Appeals was entered on February 17, 1986, affirming petitioner's conviction of 28 September 1983. The order denying petitioner's request for reconsideration was dated April 8, 1986. The jurisdiction of this Court is invoked under 28 U.S.C. § 1259(3) by filing this petition within 60 days of the order.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitution of the United States provides:

> Amendment VI: In all criminal prosecutions, the accused shall enjoy the right to a speedy . . . trial . . ."

The Interstate Agreement on Detainers Act, 18 U.S.C. App., Pub. L. No. 91-538 § 2, 84 Stat. 1397 (1970) provides:

> Article III
>
> (a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party State, and whenever during the continuance of the term of imprisonment there is pending in any other party State any untried indictment, information, or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred and eighty days after he shall have

caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information, or complaint.

(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections, or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(c) The warden, commissioner of corrections, or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information, or complaint on which the detainer is based.

Article IV

(a) The appropriate officer of the jurisdiction in which an untried indictment, information, or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party State made available in accordance with article V(a) hereof upon presentation of a written request for temporary custody or availability to the

appropriate authorities of the State in which the prisoner is incarcerated. And provided further, That there shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which period the Governor of the sending State may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

Article V

(a) In response to a request made under article III or article IV hereof, the appropriate authority in a sending State shall offer to deliver temporary custody of such prisoner to the appropriate authority in the State where such indictment, information, or complaint is pending against such person in order that speedy and efficient prosecution may be had . . . .

Article IX

This agreement shall be liberally construed so as to effectuate its purposes . . .

Sec. 5. All courts, departments, agencies, officers, and employees of the United States and of the District of Columbia are hereby directed to enforce the agreement on detainers and to cooperate with one another and with all party States in enforcing the agreement and effectuating its purpose . . . .

STATEMENT OF THE CASE

On September 19, 1982, petitioner was arrested by military authorities for offenses committed that day

and was placed in pretrial confinement. AE 36; R. 13-14. On November 1, 1982, petitioner made his first request for a speedy trial by the military. AE 36; R. 13-14. On December 3, 1982, petitioner was released from pretrial confinement. AE 36; R. 13-14.

On December 5, 1982, petitioner was arrested by law enforcement authorities in St. Mary's County, Maryland, for offenses committed that day and was held on $25,000 bond. AE 36; R. 13-14. The Armed Forces Police placed a "military detainer" on petitioner on December 14, 1982, informing Maryland authorities of pending military charges and requesting to be notified when petitioner was available "for release to 'Military Control.' "[1] AE 22, 36.

On January 17, 1983, the trial defense counsel submitted a memorandum to the officer who convened petitioner's court-martial requesting, for tne second time, a psychiatric evaluation of petitioner. He concluded the correspondence by stating "2. . . . One of the paramount interests of justice is a speedy disposition of the offenses charged against AN Greer. The Defense is aware of no actions to get AN Greer back under federal control. 3. The Defense respectfully requests that the Government inform the Defense of what actions have been taken to reassert jurisdiction over AN Greer."[2] AE 10, 36.

---

[1] The Court of Military Appeals found that this "military detainer" as well as a letter from the commanding officer of the local naval legal service office, dated February 4, 1983, could both be considered "detainers" for purposes of the Interstate Agreement on Detainers Act, 18 U.S.C. App., Pub. L. No. 91-538, § 2.84 Stat. 1397 (1970). App. at 6a.

[2] The Court of Military Appeals found this language to be "too obliquely worded to constitute a demand for trial." App. at 8a.

On January 18, 1983, petitioner was convicted in District Court, St. Mary's County, Maryland, of sexual assault and sentenced to one year in jail. AE 31, 36; R. 13-14. On February 4, 1983, the Commanding Officer, Naval Legal Service Office, Washington, D.C. sent a letter to the sheriff, St. Mary's County, Maryland, informing him that the Navy intended to pursue military charges against petitioner and requesting the sheriff to notify the command of petitioner's transfer or impending release. AE 31, 36; R. 13-14. On February 8, 1983, the St. Mary's County sheriff acknowledged receipt of the letter. AE 32, 36; R. 13-14.

The Commanding Officer, Naval Legal Service Office, Washington, D.C., wrote a letter on April 14, 1983 to the Commissioner of Maryland, Division of Corrections requesting that Maryland temporarily release petitioner to the military authorities for trial under authority of the Interstate Agreement on Detainers Act, 18 U.S.C. App., Pub. L. No. 91-538 § 2, 84 Stat. 1397 (1970) (Agreement). This letter was forwarded on April 18, 1983 by the military judge assigned to the case with a request for appropriate action by Maryland authorities. AE 15, 36; R. 13-14.

The petitioner made a final request for speedy trial on April 25, 1983. AE 11, 36; R. 13-14. Petitioner completed his Maryland sentence and was returned to military control and placed in pretrial confinement on September 10, 1983. AE 36; R. 13-14.

Petitioner was tried by general court-martial which began on September 26, 1983. Prior to pleas, petitioner moved to dismiss the charges for lack of a speedy trial but this motion was denied. AE 36; R 14-32. Petitioner was convicted of unauthorized absence, consensual sodomy, and assault with intent to

commit rape, in violation of Articles 86, 125 and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 886, 925, and 934, respectively. The court sentenced him to confinement for five years, forfeiture of all pay and allowances, reduction to the lowest enlisted pay grade, and a dishonorable discharge. The Navy-Marine Corps Court of Military Review reduced the confinement to three years. App. at 13a. Although the constitutional speedy trial issue has been continuously litigated throughout the trial and appellate process, the Agreement issue was not specifically litigated until the Court of Military Appeals specified it for review in the following form: Whether the appellant was denied his right to a speedy disposition of the charges under the Interstate Agreement on Detainers Act, 18 U.S.C. App. ?

REASONS FOR GRANTING THE PETITION

BY HIS COUNSEL'S REPEATED AND EXPRESS DESIRE FOR SPEEDY DISPOSITION OF HIS PENDING MILITARY CHARGES, PETITIONER COMPLIED WITH THE NOTICE AND REQUEST PROVISION OF ARTICLE III OF THE INTERSTATE AGREEMENT ON DETAINERS ACT.

There is good cause to grant this petition for a writ of certiorari, because this case presents an important question of federal law which has not been, but should be, settled by this Honorable Court. The United States Court of Military Appeals' decision in this case has, in effect, read a semantic formalism into Article III of the Interstate Agreement on Detainers Act (Agreement), 18 U.S.C. App., Pub. L. No. 91-538 § 2, 84 Stat. 1397 (1970), which is contrary to Article IX's "liberal construction" rule and is inconsistent with

this Court's decision in *United States v. Mauro*, 436 U.S. 340 (1971).

In *Mauro*, this Court stated that the purpose of the Agreement is "to encourage the expeditious disposition of such charges and to provide cooperative procedures among member states to facilitate such disposition." *Id.* at 351. Article III of the Agreement, a congressionally sanctioned interstate compact,[3] establishes a procedure by which a prisoner incarcerated in one State (the sending State) may demand the speedy disposition of "any untried indictment, information or complaint" that is the basis of a detainer lodged against him by another state (the receiving State). Whenever a detainer is lodged against a prisoner, the proper official having control and custody over him must promptly advise him of the detainer and of his right under the Agreement to demand a prompt resolution of all untried offenses lodged against him in other jurisdictions. Article III(c). The prisoner may then send a written notice to the prosecuting officer and the appropriate court in which the untried charges are pending, and request that a final disposition be made of the untried charges. Article

---

[3] The Agreement is a compact among 48 states, the District of Columbia, Puerto Rico, the Virgin Islands, and the United States. The Agreement was drafted in 1956 by the Council of State Governments. It was adopted by the State of Maryland (where petitioner was incarcerated) and it is now codified at Maryland Annotated Code, art. 27, §§ 616A-616S. The Agreement applies to the Military, Art. IX, § 5, and the Judge Advocate General of the Navy has promulgated instructions for implementation of the Agreement in the Manual of the Judge Advocate General (JAGMAN) 1315-1316. The Agreement is a federal law subject to federal construction. *Cuyler v. Adams*, 449 U.S. 433 (1981).

III(a). Once the prisoner's request has been delivered to the receiving State he must be brought to trial in that jurisdiction within 180 days or else the charges must be dismissed with prejudice. Article III(a).

The Court of Military Appeals found three conditions necessary to invoke the Agreement's 180-day time limitation: (1) an accused must have entered upon a term of imprisonment; (2) a detainer must have been filed against him; and (3) he must have provided notice of the place of his imprisonment and requested a disposition of the pending charges. App. at 5a. The court found that, although the first two conditions were met, petitioner failed to satisfy the formal notice and request requirements of Article III of the Agreement, because his initial speedy trial demand of November 1, 1982, coupled with the defense counsel's letter of January 17, 1983, was insufficient to satisfy Article III(a) of the Agreement. App. at 8a.

Petitioner's initial speedy trial demand of November 1, 1982, coupled with his defense counsel's memorandum of January 17, 1983, is the functional equivalent of the notice and request required by Article III(a) of the Agreement. Prior to his arrest and incarceration by Maryland authorities, petitioner submitted a written demand for speedy trial to the military authorities. AE 36; R. 13-14. After petitioner's incarceration by the Maryland authorities, petitioner, through his defense counsel, submitted a written memorandum, dated 17 January 1983, to the military authorities. The letter was a request for a psychiatric evaluation but it also stated "[one] of the paramount interests of justice is a speedy disposition of the offenses charged against AN Greer. The Defense is aware of no actions to get AN Greer back under

federal control. The Defense respectfully requests that the Government inform the Defense of what actions have been taken to reassert jurisdiction over AN Greer." AE 10. Counsel again demanded a speedy trial on April 25, 1983. AE 11, 36; R. 13-14.

Despite these repeated demands and a formal request for release of petitioner made to Maryland by the Navy on April 14, 1983, petitioner was not released to military control until September 10, 1983, almost five months after the Navy had requested his release. The record is silent as to what, if any, actions were taken by the Navy to regain control over the petitioner after the 30 day period, within which the Governor of Maryland had to disapprove the request under Article IV.

Petitioner did comply with Article III of the Agreement because the speedy trial demand of November 1, 1982, coupled with the memorandum of January 17, 1983, certainly put the military authorities on notice that petitioner was interested in a speedy disposition of his military charges and that he desired to be returned to military control in order that they might be resolved. A fair reading of the January 17, 1983 memorandum is that the defense was expressing a desire for a speedy trial, contrary to the Court of Military Appeals' conclusion that the memorandum was "too obliquely worded to constitute a demand for trial." App. at 8a. Counsel's April 25 demand is further evidence of what petitioner desired from the beginning—speedy resolution of his military charges. Furthermore, the lower court's conclusion that petitioner's initial (November 1) demand for speedy trial did not carry forward because of his subsequent unauthorized absence is unsound. App. at 8a.

Petitioner's unauthorized absence was not voluntary; it was occasioned solely by his Maryland arrest on 5 December. Therefore, the absence does not serve to undermine his express desire for speedy disposition of his military charges.

Finally, the Court of Military Appeals was incorrect in reasoning that petitioner failed to properly notify the military *where* he was imprisoned. It is abundantly clear that the Navy knew his location because on February 4, 1983 the Commanding Officer of the Washington Naval Legal Service Office, which had jurisdiction over petitioner's case, notified the sheriff of St. Mary's County that the Navy intended to try petitioner. AE 31, 36; R. 13-14.

In *Mauro*, the respondent failed to invoke Article IV of the Agreement in specific terms. This Court held, however, that this did not waive his right to assert a denial of the protections of Article IV on appeal because "from the time he was arrested [he] persistently requested he be given a speedy trial." *Id.* at 364. Although this Court was not addressing the notice and request for speedy trial provisions under Article III of the Agreement, the language used is instructive: "[W]hen the purposes of the Agreement and the reasons for its adoption are implicated, there is simply no reason to give an unduly restrictive meaning to the Agreement's terms." *Id.*, at 361-62; *accord, Cuyler v. Adams*, 449 U.S. 443 (1981) (looking to purposes of the Agreement in light of Article IX's "liberal construction" rule).

The Court of Military Appeals noted that the issue in this case, whether strict compliance with the formal notice and request requirements is necessary to invoke Article III(a), has been interpreted differently

by numerous jurisdictions. App. at 7a. Some appellate courts have given a restrictive interpretation to the formal notice and request requirements of Article III. *Tinghitella v. State of California*, 718 F.2d 308 (9th Cir. 1983); *McCallum v. State*, 407 So.2d 865 (Ala. Cr. App. 1981); *Williams v. State of Maryland*, 445 F. Supp. 1216 (D. Md. 1978); *Gray v. Benson*, 443 F.Supp. 1284 (D. Kan. 1978), *aff'd* 608 F.2d 825 (10th Cir. 1979). Other courts have excused failure of strict compliance when a prisoner has received inaccurate or misleading information, or is unable to comply with the procedures provided in Article III, through no fault of his own. *Romans v. Dist. Ct., Eighth Judicial District*, 663 P. 2d 477 (Colo. 1981) (prison officials failed to inform prisoner of right to make request); *Burns v. State*, 578 S.W. 2d 650 (Tenn. Ct. App. 1978) (prison officials failed to forward request); *Schofs v. Warden*, 509 F. Supp. 78 (E.D. Ky. 1981) (prisoner denied necessary forms); *United States v. Hutchins*, 489 F.Supp. 710 (N.D. Ind. 1980) (wrong official informed prisoner of rights under Agreement and accepted notice and request under Article III). This Court should grant this petition to give guidance to the various jurisdictions as to what degree of compliance with the notice and request provision of Article III(a) is required. Guidance is particularly needed in the armed services because the factual situation presented here is not uncommon and also because this case is the Court of Military Appeals' first venture into this federal statute.

Although the issue involved in the instant case has not been decided directly by this Court, this Court has noted: "The District Court ruled that respondent's letters requesting disposition of the detainer were suf-

ficient to invoke Article III even though they did not strictly comply with Article III's request procedures. We assume without deciding, that this ruling on the issue whether respondent complied with the procedures of Article III is correct." *Carchman v. Nash*, ___U.S. ___, 105 S.Ct.3401, 3405 n.2 (1985). This language supports the position that petitioner did effectively comply with Article III. Assuming that the Article III(a) provision of the Agreement was triggered on January 17, 1983, the 180-day period in which to bring petitioner to trial lapsed long before 26 September 1983, the date he was brought to trial. Under the Agreement the charges and specifications must be dismissed.

CONCLUSION

This petition for a writ of certiorari should be granted. The United States Court of Military Appeals has erroneously decided an important question of federal law that has widespread implications in and out of the military. The court's holding is a "conservative" and strict construction of the Agreement which is inconsistent with the spirit of this court's opinion in *Mauro*, as well as with Article IX's "liberal construction" rule.

Respectfully submitted,

DAVID C. LARSON
Captain
JAGC, U.S. Navy
Counsel of Record

RICHARD F. MCMANUS
Lieutenant
JAGC, U.S. Navy
Appellate Defense Counsel

APPENDIX

U.S. Court of Military Appeals.

No. 50687.
NCMCM 84-0895.

Feb. 17, 1986
UNITED STATES, *Appellee*,
v.
STANLEY R. GREER, Airman U.S. Navy, *Appellant*.

Pursuant to his pleas, accused, Airman United States Navy, was found guilty by general court-martial of unauthorized absence, consensual sodomy and assault with intent to commit rape. He appealed. The United States Court of Military Review, affirmed the findings but concluded sentence was inappropriately severe and reduced the period of confinement. Review was granted. The United States Court of Military Appeals, Cox, J., held that accused failed to sufficiently invoke 180-day limitations period of Interstate Agreement on Detainers.

Affirmed.

For Appellant: *Lieutenant Richard F. McManus, JAGC, USNR* (argued); *Commander David C. Larson, JAGC, USN* and *Lieutenant Louis F. Sadler, JAGC, USN* (on brief); *Lieutanant J. Cunyon Gordon, JAGC, USN*.

For Appellee: *Lieutenant Commander John B. Holt, JAGC, USN* (argued: *Captain W.J. Hughes, JAGC, USN* (on brief); *Captain Carl H. Horst, JAGC, USN* and *Commander Michael P. Green, JAGC, USN*.

Opinion of the Court

COX, Judge:

Appellant was charged with unauthorized absence, rape, forcible sodomy, and kidnapping, in violation of Articles

86, 120, 125, and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 886, 920, 925, and 934, respectively. Pursuant to his pleas, he was found guilty of unauthorized absence. Contrary to his pleas, he was also convicted by the military judge sitting alone as a general court-martial of consensual sodomy and assault with intent to commit rape, in violation of Articles 125 and 134. His sentence to confinement for 5 years, forfeiture of all pay and allowances, reduction to pay grade E-1, and a dishonorable discharge was approved by the convening authority. The Court of Military Review affirmed the findings, but concluded under the circumstances that the sentence was inappropriately severe and reduced the period of confinement to 3 years. This Court specified the following issue for review:

> WHETHER THE APPELLANT WAS DENIED HIS RIGHT TO A SPEEDY DISPOSITION OF THE CHARGES UNDER THE INTERSTATE AGREEMENT ON DETAINERS ACT, 18 U.S.C. APP.

Appellant contends that he was not tried within 180 days after he requested a trial under Article III(a) of the Interstate Agreement on Detainers, 18 U.S.C.App., Pub.L.No. 91-538, § 2, 84 Stat. 1397 (1970), and therefore the charges should be dismissed. We hold that the 180-day time limitation was never activated by appellant and affirm.

Prior to pleas, appellant moved to dismiss the charges for lack of speedy trial. The following is a chronology of pertinent events:

19 Sept 82 Sexual offenses committed; appellant apprehended by military authorities and placed in pretrial confinement.

1 Nov 82 Appellant requests speedy trial by military.

3 Dec 82 Appellant released from pretrial confinement.

5 Dec 82 Appellant commits offenses in Maryland, arrested by St. Mary's County, Maryland, authorities, and held on $25,000 bond.

6 Dec 82 Appellant declared AWOL.

7 Dec 82 Trial defense counsel requests convening authority to order a psychiatric evaluation of appellant.

14 Dec 82 Armed Forces Police place "military detainer" on appellant, informing St. Mary's County, Maryland, authorities of military charges pending and requesting to be notified when appellant available "for release to 'Military Control.' "

17 Jan 83 Trial defense counsel submits second request to convening authority for psychiatric exam of appellant, stating: "2. It is respectfully requested that the requested psychiatric evaluation be provided. One of the paramount interests of justice is a speedy disposition of the offenses charged against AN Greer. The Defense is aware of no actions to get AN Greer back under federal control. 3. The Defense respectfully requests that the Government inform the Defense of what actions have been taken to reassert jurisdiction over AN Greer."

18 Jan 83 Appellant convicted in District Court, St. Mary's County, Maryland, of fourth degree sexual assault and sentenced to a year in jail.

4 Feb 83 Commanding Officer, Naval Legal Service Office, Washington, D.C., sends letter to Sheriff, St. Mary's County, Maryland, stating that "Navy intends to pursue" military charges pending against appellant. Referring to the Interstate Agreement on Detainers Act, it was requested that the sheriff notify that command of appellant's transfer or impending release.

8 Feb 83 Sheriff, St. Mary's County, Maryland, acknowledges receipt of 4 February letter.

14 Apr 83 Commanding Officer, Naval Legal Service Office, Washington, D.C., writes a letter to the Commissioner of Maryland Division of Corrections requesting that Maryland temporarily release appellant to military authorities for trial by general court-martial under authority of Interstate Agreement on Detainers Act.

18 Apr 83 Military judge approves the 14 April request for temporary custody of appellant and forwards the request to Maryland authorities.

25 Apr 83 Trial defense counsel requests convening authority to process appellant for Other Than Honorable Discharge in lieu of court-martial. In this request it is stated that "the accused through counsel reasserts his demand for a speedy resolution of the charges against him"

10 Sept 83 Appellant completes Maryland sentence, is returned to military control, and placed in pretrial confinement.

26 Sept 83 Court-martial begins.

"The Interstate Agreement on Detainers (Agreement) is a compact" entered into by "48 States, the District of Columbia, Puerto Rico, the Virgin Islands and the United States." *Carchman v. Nash*, ___U.S. ___, 105 S.Ct. 3401, 3403, 87 L.Ed.2d 516 (1985). The Agreement applies to the military, Art. IX, § 5, and has been adopted by the State of Maryland Annotated Code, Article 27, §§ 616A-616S). The Judge Advocate General of the Navy has promulgated instructions for implementation of the agreement in Manual of the Judge Advocate General (JAGMAN) 1315-1316.

The Agreement was motivated by a legislative determination "that charges outstanding against a prisoner, de-

tainers based on untried indictments, informations, or complaints and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation." The purpose of the Agreement, therefore, is "to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations, or complaints." Article I. To accomplish this, the Agreement provides procedures whereby a prisoner or member state may request disposition of outstanding detainers. Articles III and IV.

Article III establishes a procedure whereby a prisoner serving a sentence in one state (the sending state) may demand disposition of any untried charges on which a detainer has been lodged against him by another state (the receiving state). The official who has "custody of the prisoner" is required to inform him of the existence of the detainer and his rights under the Agreement. Art. III(c). A prisoner desiring final disposition of outstanding detainers must file a written demand with his custodian, who then forwards the demand "by registered or certified mail," along with the certificate stating the term of the commitment, time served, time remaining on the sentence, good time earned, and parole eligibility date of the prisoner, to the appropriate officials of the jurisdiction in which charges are pending. Art. III(a) and (b). When a prisoner makes such a demand, the authorities in the receiving state must bring him to trial within 180 days or the court must dismiss the charges "with prejudice." Arts. III(a) and V(c).

In order for appellant to invoke the Agreement's 180-day time limitation, then, (1) he must have entered upon a term of imprisonment; (2) a detainer must have been filed against him; and (3) he must have provided notice of the place of his imprisonment and requested final disposition of the charges.

The first condition was met—appellant entered upon a term of imprisonment on January 18, 1983, when sentence was pronounced in Maryland District Court.

The second condition was met when a detainer was lodged against appellant. "A detainer is a notification filed with the institution in which a prisoner is" incarcerated, "advising that" the prisoner "is . . . pending criminal charges in another jurisdiction" and "asking the institution either to hold the prisoner . . . or to notify the" jurisdiction "when release of the prisoner is imminent." *Carchman v. Nash, supra* at 3403; *Cuyler v. Adams*, 449 U.S. 433, 436 n. 3, 101 S.Ct. 703, 706 n. 3, 66 L.Ed.2d 641 (1981); *United States v. Mauro*, 436 U.S. 340, 359, 98 S.Ct. 1834, 1846, 56 L.Ed.2d 329 (1978). "[A] detainer may be lodged against a prisoner" without judicial supervision "on the initiative of a" law enforcement officer or prosecuting official. "[A] detainer merely puts the officials of the institution in which the prisoner is incarcerated on notice that the prisoner is wanted in another jurisdiction for trial . . . Further action must be taken by the receiving State in order to [actually] obtain the prisoner." *United States v. Mauro, supra* at 358, 98 S.Ct. at 1846. Once a detainer is filed against a prisoner, it remains lodged without any action being taken on it and its mere existence may present problems in sentencing, as well as in the rehabilitative process. *Id.* at 358-60, 98 S.Ct. at 1846-47. Thus, it appears that the "military detainer" filed by the Armed Forces Police on December 14, 1982, and the Commanding Officer's letter of notification of February 4, 1983, could both be considered detainers for purposes of the Agreement.

Whether the third prerequisite was met presents the troubling aspect of this case. It is undisputed that appellant did not technically comply with the procedures provided in Article III. In fact, he failed to meet the sole requirement placed on a prisoner under Article III in that he did not make a "written request for a final disposition"

through "the warden, commissioner of corrections, or other official having custody of him." Art. III(b).

The requirement that the request be forwarded by the prisoner's custodian with supporting documentation serves an important purpose in alerting authorities of the receiving state that the prisoner is invoking the Agreement. Otherwise, each communication from a prisoner would require scrutiny to determine whether it could possibly be construed as invoking the Agreement. The receipt of the certificate documenting the prisoner's status and parole eligibility assists the receiving state in determining whether to prosecute. *See Beebe v. Vaughn*, 430 F.Supp. 1220, 1223 (D.Del. 1977). Consequently, the procedural requirements of filing a request further the underlying purpose of the Agreement by expediting resolution of charges.

Generally, a prisoner may not benefit from the statutory 180-day time limitation unless he first complies with the formal notice and request requirements of Article III. *Tinghitella v. State of California*, 718 F.2d 308 (9th Cir.1983); *McCallum v. State*, 407 So.2d 865 (Ala.Cr.App.1981); *Williams v. State of Maryland*, 445 F.Supp. 1216 (D. Md. 1978); *Gray v. Benson*, 443 F.Supp. 1284 (D.Kan.1978), *aff'd.* 608 F.2d 825 (10 Cir.1979). As the Agreement must be construed liberally "to effectuate its purposes," Art. IX, some exceptions have been recognized. For example, failure of strict compliance may be excused when a prisoner receives inaccurate or misleading information or is unable to comply with the procedures provided by Article III through no fault of his own. *See Romans v. Dist. Ct. Eighth Judicial District*, 633 P.2d 477 (Colo.1981) (prison officials failed to inform prisoner of right to make request); *Burns v. State*, 578 S.W.2d 650 (Tenn.Cr.App.1978) (prison officials failed to forward request; *Schofs v. Warden*, 509 F.Supp. 78 (E.D. Ky.1981) (prisoner denied necessary forms); *United States v. Hutchins*, 489 F.Supp. 710 (N.D.Ind.1980) (wrong official informed prisoner of rights under Article III). Nothing in

the record here, however, explains appellant's failure to comply with the notice and request procedures of Article III.

Appellant nevertheless contends that the initial speedy trial demand of November 1, 1982, coupled with defense counsel's letter of January 17, 1983, were sufficient to invoke Article III. We do not agree. The initial demand to military authorities did not carry forward as it was followed by appellant's unauthorized absence. Although the January letter stated, "One of the paramount interests of justice is a speedy disposition of the offenses" and requested that defense counsel be informed of actions the Government had "taken to reassert jurisdiction over" appellant, it was styled as a request for psychiatric evaluation and too obliquely worded to constitute a demand for trial.[1]

In spite of the defects, appellant contends that the actions of military authorities reflect a tacit acknowledgment that defense counsel's letters were a request for disposition of charges under the Agreement. This contention is unsupported by the record. It is abundantly clear that trial counsel did not view them as such. In his endorsement of defense counsel's letter of April 25, he stated, "It should also be noted that AN Greer, under the Interstate Agreement on Detainers Act, had the right, which he has failed to exercise, to request his release from civilian confinement to settle the military charges pending against him."

Moreover, it is difficult for us to conceive how the action of the Commanding Officer in notifying Maryland authorities of the pending military charges could be construed as an acknowledgment of a request for speedy trial. This did nothing to accelerate appellant's court-martial. It

---

[1] Defense counsel's letter of April 25, 1983, was the first unequivocal demand for speedy trial after appellant's incarceration by Maryland authorities. Even if this were deemed sufficient to invoke Article III of the Agreement, appellant would not prevail, as trial was had within 180 days of that request.

was not until April 14, three months after appellant's alleged demand for disposition, that the Commanding Officer requested appellant's temporary release for trial. Apart from any right of appellant to request final disposition of the charges, the Navy had an independent right under the Agreement to request appellant's presence for trial.[2] Therefore, it does not appear that the actions of the Commanding Officer justified appellant's failure to make a proper request for disposition pursuant to the Agreement. *Cf. Nash v. Jeffes*, 739 F.2d 878 (3d Cir.1984), *rev'd. on other grounds sub nom. Carchman v. Nash, supra* 105 S.Ct. at 3405 n.2.

Appellant does not allege that he was misled in any way or that his custodians in Maryland failed to inform him of the existence of the detainer or his rights under the Agreement or somehow caused the failure to comply with the requirements of Article III. Under these circumstances, the 180-day period never began to run.

The decision of the United States Navy-Marine Corps Court of Military Review is affirmed.

Chief Judge EVERETT concurs.

---

[2] Article IV establishes a procedure by which officials of a state in which untried charges are pending may request temporary custody of a prisoner against whom it has lodged a detainer and who is serving a term of imprisonment in another state. The prisoner must be tried within 120 days after his arrival in the requesting state. Art. IV(c). The time limitations of Article IV were not triggered in this case until appellant was released to the military on September 10, 1983. As appellant was brought to trial on September 26, Article IV(c) was not violated.

DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
200 STOVALL STREET
ALEXANDRIA, VA 22332

IN THE U.S. NAVY-MARINE CORPS COURT OF MILITARY REVIEW
BEFORE

ALBERT W. EOFF II | MATTHEW J. GORMLEY III | C.J. CASSEL

STANLEY R. GREER, 281 64 2434, Airman (E-3), U.S. Navy

NMCM 84 0895 **decided** 26 July 1984
Sentence adjudged 9 September 1983 **Review pursuant to Article 66(c), UCMJ**
of General **Court-Martial convened by** Commandant, Naval District Washington, D.C. 20374

CDR David C. Larson, JAGC, USN, Appellate Defense Counsel
LT Louis F. Sadler, JAGC, USNR, Appellate Defense Counsel
LCDR John B. Holt, JAGC, USN, Appellate Government Counsel

EOFF, Chief Judge:

Appellant was convicted at a general court-martial before military judge alone of unauthorized absence of approximately nine months, a violation of Article 86, Uniform Code of Military Justice (UCMJ), of consensual sodomy, a violation of Article 125, UCMJ, and of assault with intent to rape, a violation of Article 134, UCMJ. The military judge sentenced appellant to be dishonorably discharged, to be confined at hard labor for five years, to forfeit all pay and allowances, and to be reduced to pay grade E-1. Appellant makes three assignments of error before this court. Finding merit only in the third assignment of error,

we affirm the findings of guilty but approve only that part of the sentence which includes a dishonorable discharge, confinement at hard labor for three years, forfeiture of all pay and allowances, and reduction in rate to pay grade E-1.

In his first assignment of error, appellant asserts that the evidence is insufficient to support his conviction of assault with intent to rape. From the military judge's verdict, it is obvious that he disbelieved the majority of the victim's testimony which, if true, would have supported the original charges of rape, kidnapping and forcible sodomy. It is equally obvious that the military judge also believed that appellant understated his own culpability during his testimony which, if true, would have supported only a charge of consensual sodomy. According to the testimony of the couple who helped Ms. C after appellant left here in the campgrounds, she was crying and emotionally distraught. According to appellant's roommate, when appellant arrived home later that evening, he acted nervous and repeatedly confessed that he was very scared. This evidence of the emotional states of both appellant and Ms. C considered with their respective versions of what occurred is sufficient to support the judge's verdict and to convince us beyond a reasonable doubt of appellant's guilt.

Appellant, in his second assignment of error, complains that he was denied his right to a speedy trial because he was kept in pretrial confinement a total of 91 days, 75 prior to his unauthorized absence and 16 upon his return to military control. Appellant argues that since his unauthorized absence was the result of a civilian conviction which resulted in his incarceration for almost nine months, the government is accountable for the total period of pretrial confinement for speedy trial purposes and thus a presumption arises under *United States v. Burton*, 21 USCMA 112, 44 CMR 166 (1971), that appellant was denied a speedy trial. We disagree.

In *United States v. Bush*, 49 CMR 97 (NMCR 1974), the appellant was in pretrial confinement for 18 days for an unauthorized absence before being placed on restriction from which he began a second unauthorized absence. After his second unauthorized absence, the appellant was confined for 64 more days before trial. The court held that appellant's second unauthorized absence released the government from responsibility, for speedy trial purposes, for the initial processing period including the period of confinement: "[a]n accused, once set free from pretrial confinement has it entirely within his control to ensure that the government remains accountable for the delay in processing the pending charges. Therefore, if he immediately violates his responsibility by absenting himself without authority, then, as a result of his own misconduct, the time clock measuring the government's accountability is reset to zero at that time of his unauthorized absence provided that the government has proceeded diligently to that point and presumption of lack of a speedy trial has not attached." *Id.* at 99.

We see no persuasive distinction in the fact that appellant did not intentionally commence an unauthorized absence in this case. His unauthorized absence resulting from his civilian conviction was the product of his own misconduct shortly after he was released from pretrial confinement. Thus, *Bush* is controlling here and no presumption of lack of a speedy trial arises. *United States v. O'Brien*, 22 USCMA 558, 48 CMR 42 (1973); *United States v. Bowman*, 13 MJ 640 (NMCMR 1982). We further find from our functional analysis of the entire pretrial processing periods that the government proceeded to trial with reasonable diligence and without deliberate oppression of appellant or lack of concern for the requirement of expeditious prosecution. *United States v. Hagler*, 7 MJ 944 (NCMR 1979), *pet. den.*, 8 MJ 172 (CMA 1979).

In his final assignment of error, appellant asserts that his sentence was inappropriately severe. In this, we agree.

Recognizing the military judge's advantageous perspective in determining an appropriate sentence, we nevertheless feel that a sentence including five years confinement at hard labor and a dishonorable discharge is inappropriately severe for this appellant under the facts of this case. We agree that there is evidence to support the judge's findings of an assault with intent to commit rape, yet the evidence reveals that the offenses of which appellant was guilty grew out of a consensual sexual encounter due to appellant's misperceptions and overaggressiveness.

We in no way condone nor forgive appellant for his misconduct. Judging by his attitude at trial and his expression of remorse, however, we feel that he demonstrates a good potential for rehabilitation which would be better served by no more than three years in confinement and which could be undermined by five.

We therefore approve the findings as approved below but only that part of the sentence that includes a dishonorable discharge, confinement at hard labor for three years, total forfeiture of pay and allowances, and reduction in rate to pay grade E-1.

/s/ALBERT W. EOFF II
ALBERT W. EOFF II

Judge GORMLEY and Judge CASSEL concur.

/s/MATTHEW J. GORMLEY
MATTHEW J. GORMLEY II

/s/C.J. CASSELL
C.J. CASSELL

UNITED STATES COURT OF MILITARY APPEALS

USCMA Dkt. No. 50687/NA
CMR Dkt. No. 84-0895

ORDER DENYING PETITION FOR RECONSIDERATION

UNITED STATES

Appellee

v.

STANLEY R. GREER (281-64-2434),

Appellant

On consideration of appellant's petition for reconsideration of the Court's decision, 21 M.J. 338 (C.M.A. 1986), it is by the Court this 8th day of April 1986,

ORDERED:

That said petition is hereby denied.

For the Court,

/s/John A. Cutts, III
Deputy Clerk of the Court

cc: The Judge Advocate General of the Navy
Appellate Defense Counsel (McMANUS)
Appellate Government Counsel (HOLT)